

In re) Fair Hearing No. 15,588
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Appeal of)

The petitioner appeals the decision by the Department of Social and Rehabilitation Services (SRS) revoking her registration to operate a family day care home. The issue is whether the Department's decision is in accord with the pertinent statutes and regulations.

1. Since at least 1991, the petitioner has been registered to operate a family day care home at 67 Barrett St. in South Burlington. She has applied for the registration on a yearly basis in her name, and has listed her address as 67 Barrett. The petitioner purchased that property in 1985.

2. In May, 1994, the petitioner sold the 67 Barrett St. house to her daughter and son-in-law. In August, 1994, the petitioner purchased the house next door at 69 Barrett St.

3. The petitioner's address in the phone book is listed as 69 Barrett St. The phone at 67 is listed in her daughter's name.

4. The petitioner has never applied for, nor been granted, a registration to operate a day care at 69 Barrett St. Her daughter is not registered to operate a day care.

5. In June, 1998, SRS received information from a parent that the petitioner was operating a day care at 69 Barrett St.

6. On June 23, 1998, three investigators from SRS visited the two properties. One investigator went to 69 Barrett; the other two went to 67.

7. The investigator who went to 69 knocked on the door and heard children's and adults' voices inside. However, nobody answered the door, although a van was parked in the driveway. After knocking and waiting for about 5 minutes the investigator went next door to 67 to check on his colleagues.

8. In the meantime, the investigators who had gone to 67 also had no response when they knocked on the front door of that house. They then went to a gate at the side of the house that opened into the back yard and rang a bell and called to announce their presence. Nobody answered, although they heard children in the backyard.

9. The investigators then walked into the back yard where there was a patio and a swimming pool. One child was in the pool and four more were in the yard. No adult could be seen or responded to their calls.

10. After at least a minute, a woman who was later identified as the petitioner's daughter appeared and yelled at them to get off the property. The investigators identified themselves, but the woman went into the house to call the police.

11. One of the investigators spoke with the police dispatcher and identified themselves and the purpose of their visit. During this time the woman became more agitated and abusive. She told the investigators that the children in and around the pool were her daughters.

12. At this time the petitioner appeared from the side of the backyard that was next to the house at 69. She also asked the investigators to leave, but eventually calmed down when the investigators identified themselves.

13. The investigators asked her who owned 69, and the petitioner told them she didn't know. The investigators asked the petitioner to name the children, and the petitioner responded that she didn't know the last names of two of them.

14. The investigators also asked the petitioner to show them her day care records, which the petitioner initially refused; then she went inside to call her lawyer.

15. Only after one of the investigators talked with the petitioner's lawyer did the petitioner show them her records and admit that she owned the house at 69 Barrett.

16. The investigators observed children's swimming attire and towels hanging in the backyard of 69, which was joined by a path with a gate to the backyard of 67. When the investigators returned to 69, the van was gone and nobody was home.

17. At the hearing in this matter (held on September 14, 1998) five parents of children who had stayed at the day

cares in the two homes for varying time periods between August, 1995, and June, 1998, all testified, very credibly, that the petitioner and her daughter operated day cares out of both houses, 67 and 69. At the time the parents had placed their children, they had been interviewed by the petitioner at 69. Then, they had been shown both houses by the petitioner; and their children had been assigned to one house or the other.

18. The petitioner had represented to all these parents that she lived at 69 and operated the day care there with her sister-in-law, and that her daughter lived at 67 and ran the day care at that address. All of the parents believed from their initial interviews and subsequent observations that the petitioner lived at 69 with her sister-in-law, and that her daughter lived at 67. None of the parents knew that only the petitioner was registered to operate a day care, and only at 67. The parents with children at 67 paid the petitioner's daughter, who always demanded cash.

19. The petitioner testified that, despite appearances to the contrary, she has lived at 67 throughout the period, and that her sister-in-law has run the day care at 69--and that they inadvertently "never got around" to registering the home at 69 for day care.

20. The petitioner's testimony at the hearing was vague and obfuscating. She stated she gets her mail at both addresses, but produced no other credible evidence of where

she lives.¹ The hearing officer deemed her testimony to be highly incredible.

21. The evidence overwhelmingly establishes that the petitioner has lived at 69 Barrett Street since at least 1995, and that she has knowingly operated a day care home there without a registration from SRS.

22. The evidence also establishes clearly that the person who ran the day care at 67 on most, if not all, days was the petitioner's daughter, who was not registered to do so.

ORDER

The Department's decision is affirmed.

REASONS

33 V.S.A. § 306(b)(3) and 3 V.S.A. § 814 authorize the Commissioner of Social and Rehabilitation Services to issue licenses for day care facilities, promulgate regulations applicable to those facilities, and to deny or terminate licenses or registrations for "cause after hearing".

SRS based its decision in this matter on 33 V.S.A. § 3502(a) which provides:

Unless exempted under subsection (b) of this section, a person shall not operate . . . a family day

¹The petitioner submitted a "non-driver identification card" from the Department of Motor Vehicles that listed her address as 67 Barrett. However, the card was issued in February, 1995, and expired in May, 1998.

care home without registration from the department.

In this case the evidence clearly establishes that the petitioner operated an unlicensed facility at the house where she lived (69 Barrett) and allowed an unregistered individual to operate and supervise a facility using her registration at another home (67 Barrett), in which she did not reside, in clear violation of the above statute. Moreover the petitioner engaged in a blatant pattern of deceit to parents and the Department regarding her residence and the legal status of the two facilities and the individuals who operated those facilities.

Although SRS inexplicably did not specify any other reasons in its notices of revocation to the petitioner, it is noted that Section VI. of its Regulations for Family Day Care Homes includes the following:

6. The Registrant shall permit visits, inspections and examination of the Family Day Care Home, its records, equipment and materials at reasonable hours by representatives of the Division. The Division representatives shall make a reasonable effort to announce their presence and identify themselves prior to entering the home.
7. The Division may deny the issuance of a Registration Certificate if it has found that the person who has submitted the Application for Registration has not complied with these regulations or has demonstrated behavior which indicates an inability to care adequately for children.
8. The applicant or Registrant shall not interfere with, impede, deter, provide false information or cause another to do any of the aforementioned, or in any manner hinder the Department or its agent(s) in an investigation or inspection.
9. A violation of any section of the law or

regulations regarding a Family Day Care Home may be cause for the revocation of the Registration Certificate.

The evidence clearly establishes that the petitioner violated the regulations cited above by attempting to impede and frustrate SRS investigators at her and her daughter's homes on June 23, 1998. This alone would have provided the Department with ample basis to revoke her registration.

Perhaps most egregious, however, is the fact that the petitioner (or whoever was in charge at 67 that day) left children unattended in a swimming pool for a period that by the petitioner's own admission lasted at least "one full minute". Again, SRS in its notices to the petitioner inexplicably did not cite this as a basis for its revocation, but it certainly demonstrates the petitioner's failure to adequately protect the health and safety of children at a facility that she was the registered operator of. See Sections V. 1. and 10. of the above-cited Regulations.

For all the above reasons it must be concluded that the Department did not abuse its discretion in determining that the petitioner's violations were cause for revocation of her day care home registration. The Board is, thus, bound by law to affirm the Department's decision on this basis. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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